D.P.U./D.T.E 95-2C-1/3C-1; D.P.U./D.T.E. 96-2C-1/3C-1; D.P.U./D.T.E. 97-2C-1/3C-1; D.P.U./D.T.E. 98-2C-1/3C-1

Applications of Cambridge Electric Light Company/Commonwealth Electric Company under the provisions of G.L. c. 164, § 94G, for approval by the Department of the actual system performance of the Companies' generating units between July 1, 1994 and February 28, 1998.

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Petitioners

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I. INTRODUCTION

On June 30, 2000, Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") (together, the "Companies") and the Attorney General of the Commonwealth ("Attorney General") (together, the "Parties") filed for approval by the Department of Telecommunications and Energy ("Department") a Joint Motion for Approval of Settlement Agreement ("Joint Motion") and a Settlement Agreement wherein the Parties have proposed to resolve issues concerning the Companies' Generating Unit Performances ("GUP") between July 1, 1994 and February 28, 1998, as well as any performance issues unresolved from filings submitted previously (Settlement Agreement at 1).[(1)] The Parties state that the Settlement Agreement does not resolve (1) performance issues relating to generating units from which the Companies receive power that are subject to review in other Department dockets, and (2) the issue of New England Power Pool reactivation expenses identified in Exemption from Fuel Charge, D.T.E. 98-13B (1999), or (3) any other fuel charge related issues (id. at 2).

II. SETTLEMENT AGREEMENT

The proposed Settlement Agreement is designed to resolve all outstanding issues

concerning Cambridge's and Commonwealth's GUP between July 1, 1994 and February 28, 1998 (id. at 1). In settlement of these issues Cambridge will refund to its

retail customers $1,750,000.00. Commonwealth will refund to its retail customers $750,000 (id. at 3). As of the date of the Department's approval of the Settlement Agreement, such refunds will be credited to Cambridge's and Commonwealth's respective variable transition charge accounts as established pursuant to the Restructuring Plan approved by the Department in Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company,

D.T.E. 97-111 (2000) (id.).

The Parties state that approval of the Settlement Agreement is in the public interest (Motion at 2). First, customers would be reimbursed for costs incurred to acquire replacement electricity during system outages (id.). Second, approval of the Settlement Agreement concludes the extensive litigation of these matters, contains costs, and reduces the administrative burden on the Department (id.).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in the Company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and the public interest and results in just and reasonable rates. See Western Massachusetts Electric Company, D.P.U. 94-8C-A/D.P.U. 95-8C-1/D.P.U. 96-8C-1, at 9 (1996); Barnstable Water Company, D.P.U. 91-189, at 4 (1992); Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992).

The Department's authority to review and approve settlements of generating unit performance review issues is derived from its statutory mandate to ensure that investor-owned electric utility companies achieve the lowest possible overall costs to their customers for the procurement and use of fuel and purchased power included in the fuel charge, consistent with accepted management practices, safety and reliability of electric service, and reasonable regional power exchange requirements. See G.L. c. 164, § 94G(a); see also Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). In assessing the reasonableness of an offer of settlement that purports to settle performance review issues, the Department must scrutinize the settlement agreement in light of the evidentiary record and then weigh the settlement against the probable outcome and resulting rates were the performance review issues to follow the customary course to issuance of final Department Orders. Id. at 9-10. As part of its analysis, the Department must assess whether the financial accommodation reached between the company and

other parties to the settlement agreement fairly repairs the harm to ratepayers that the company's actions and decisions may reasonably be said to have caused. Id. at 10.

In order to assess the probable outcome of a performance review proceeding, the Department must apply the appropriate statutes and other precedent to the information available in the record. The Department's statutory authority for undertaking generating unit performance reviews is found in G.L. c. 164, § 94G. For the relevant period, the Department was authorized to set a quarterly fuel charge for a company's recovery of prudently incurred costs for fuel and purchased power. G.L. c. 164, § 94G(b). To aid in determining the prudence of such costs at a later date, the Department is required to annually set performance goals for the generating units that provide electric power to jurisdictional electric companies. G.L. c. 164, § 94G(a).

Also in accordance with G.L. c. 164, § 94G, the Department conducts annual performance review proceedings wherein actual performance data obtained during a company's performance period are reviewed and compared to the goals that had been set for that period in a prior goal-setting proceeding. Should a company fail to achieve one or more of the goals established for a performance period under review, the company must present evidence explaining the variance at the next fuel charge proceeding. G.L. c. 164, § 94G(a). The Department conducts an investigation into the circumstances behind each failure. These investigations typically involve a detailed review of activities surrounding particular generating units in order to determine whether a company, in operating and maintaining its units, followed all reasonable or prudent practices consistent with the statute. Specifically, if the Department finds that the company has been unreasonable or imprudent in such performance, in light of the facts which were known or should reasonably have been known by the company at the time of the actions in question, the company shall deduct from the fuel charge proposed

for the next quarter or such other period as it deems proper the amount of those fuel costs

determined by the Department to be directly attributable to the unreasonable or imprudent performance. G.L. c. 164, § 94G(a).

IV. ANALYSIS AND FINDINGS

The Department has evaluated the provisions of the proposed Settlement Agreement in light of the information submitted in each GUP proceeding between July 1, 1994 and

February 28, 1998. The Department finds that reimbursing Cambridge's customers $1,750,000 and Commonwealth's customers $750,000 is consistent with precedent and is a reasonable resolution of the issues presented in the Companies' performance review filings. Moreover, the Settlement Agreement results are just and reasonable rates, and is in the public interest.

The Department notes that the Settlement Agreement does not address issues concerning the performance of the Companies' generating units between March 1, 1998 and the date of divestiture as specified in D.T.E. 98-13B. Therefore, in the Companies' next transition charge reconciliation filing, the Companies are directed to submit generating unit performance information for the period between March 1, 1998 and the date of divestiture. The Department also notes that Commonwealth, under a life-of-the unit contract, received power from the Pilgrim Nuclear Unit ("Pilgrim") through termination of the contractual arrangement. The operations of Pilgrim, in terms of Commonwealth's contract, have not been included in a performance-based mechanism or similar approach that would substitute for existing generating unit performance requirements. Therefore, Pilgrim remains subject to such generating unit performance requirements. The Department directs Commonwealth to propose an approach for the operations of Pilgrim from March 1, 1998 through termination of the

contractual arrangement that would meet the objectives of the generating unit performance requirements while achieving administrative efficiency.

Finally, the Department notes that Blackstone Station continues to be owned by Cambridge. The operations of Blackstone Station have not been encompassed by a performance-based mechanism or similar approach that would substitute for existing generating unit performance requirements. Therefore, Blackstone Station remains subject to such generating unit performance requirements. However, because Blackstone Station is the only generating unit remaining under Cambridge's ownership, and because it is a minor contributor to Cambridge's supply portfolio, the Department directs Cambridge to propose an approach for operations of Blackstone Station that would meet the objectives of the generating unit performance requirements while achieving administrative efficiency. Once the Department approves an alternative mechanism to address the duration of Blackstone Station, the Department will grant an exemption from the requirements of G.L. c. 164, § 94G(a).

In accordance with the terms of the Settlement Agreement, our acceptance of the Settlement Agreement does not constitute a determination as to the merits of any allegations, contentions, or arguments made in this investigation. We note that our acceptance of the Settlement Agreement does not set a precedent for the few remaining performance review proceedings or rate filings, whether ultimately settled or adjudicated.

V. ORDER

After due notice and consideration, it is

ORDERED: That the Joint Motion for Approval of Offer of Settlement Agreement, filed on June 30, 2000, by the Attorney General and the Companies, is granted; and it is

FURTHER ORDERED: That the Joint Motion for Approval of Offer of Settlement Agreement request that the Department expand the scope of Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U./D.T.E 95-2C-1/3C-1; D.P.U./D.T.E. 96-2C-1/3C-1; D.P.U./D.T.E. 97-2C-1/3C-1; D.P.U./D.T.E. 98-2C-1/3C-1 to cover the time period from July 1, 1994 through February 28, 1998 granted; and it is

FURTHER ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company shall comply with the directives contained in this Order.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may

be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The Settlement resolves outstanding issues in Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U./D.T.E 95-2C-1/3C-1; D.P.U./D.T.E. 96-2C-1/3C-1; D.P.U./D.T.E. 97-2C-1/3C-1; D.P.U./D.T.E.

98-2C-1/3C-1.